

VERMONT LABOR RELATIONS BOARD

COLCHESTER POLICE OFFICERS')	
ASSOCIATION)	
)	DOCKET NO. 81-46
and)	
)	
TOWN OF COLCHESTER)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On September 17, 1981, the Town of Colchester ("Town") filed a petition with the Vermont Labor Relations Board requesting the Board remove the three sergeants of the Police Department from the police bargaining unit represented by the Colchester Police Officers' Association ("CPOA") because they were supervisory employees. Upon investigation of this matter by the Board, the timeliness of the Town's petition came into question since a dispute existed between the parties whether they had agreed in the most recent negotiations to include the sergeants in the bargaining unit for the duration of the agreement.

A hearing was held before the full Board December 23, 1981, at the Board hearing room in Montpelier on the timeliness of the Town's petition and the merits of the case. Attorney Robert Roesler represented the Town. CPOA was represented by Lansing Reinholz. The Town filed Requested Findings of Fact on January 14, 1982, and a Memorandum of Law on January 13, 1982. CPOA filed no Memorandum of Law or Requests for Findings of Fact.

FINDINGS OF FACT

1. The Town and CPOA began negotiations for a collective bargaining agreement in March, 1981. Subsequently, agreement was reached on most issues. One of the remaining issues in dispute was whether sergeants should be included in the bargaining unit. At the last negotiations meeting held between the parties, the Town stated they would allow sergeants to remain in the unit but would petition the Vermont Labor Relations Board to exclude them from the unit. Once the Town took this position, CPOA dropped the rest of their demands and the parties reached a tentative settlement on the entire Agreement.

2. CPOA membership ratified the Agreement and Patrolmen James Densmore and James King signed the Agreement for CPOA (Board Exhibit #1).

3. Subsequent to the signing, clerical errors were discovered in the Agreement. The Agreement was re-typed (and not re-signed by CPOA) and presented to the Town Board of Selectmen with two side letters attached to it; one agreeing to provide protective barriers in patrol cars between the front and rear seats (Union Exhibit B), and the other providing:

The parties herein undersigned mutually acknowledge that further collective bargaining over the issue of sergeants remaining in the bargaining unit would be unproductive and would in all likelihood forestall consummation of a contract agreement between the Town and the CPOA.

In light of the positions taken by the two parties, it is acknowledged that the Town, representing management, agrees to conclude negotiations and accept a contract with language consistent with the present contract that allows membership of sergeants in the bargaining unit with the understanding that the Town will petition the Vermont Labor Board for decertification of sergeants as members of the bargaining unit represented by the CPOA. (Employer's Exhibit #1, Pg. 3)

4. On August 4, 1981, the Board of selectmen ratified and signed the Agreement along with the attached side letters with the understanding that the sergeants had been included in the bargaining unit, but the Town would appeal to the Labor Board to exclude them (Employer's Exhibit #2, Union Exhibit A, Union Exhibit B).

5. The Agreement signed by the Selectmen was sent to CPOA along with the attached side letters. CPOA did not sign the Agreement because it contained the side letter concerning the sergeants.

6. CPOA President James Densmore wrote to Town Manager Francis Taginski, August 11, 1981, informing him the Town conceded in negotiations on the point of including sergeants in the bargaining unit while reserving their right to petition the Labor Board to have them removed. Densmore stated CPOA "did recognize the Town's right to petition the Labor Board to have them removed. We also stated that CPOA will fight your effort in this matter." (Employer's Exhibit #1, Pg. 1)

7. Taginski responded to Densmore's letter by informing him the Town was adamant the side letter of agreement on sergeants was "an integral part of reaching a final agreement on the contract"; and stating:

If it is the position of the association not to sign the acknowledgment letters, then it appears that final consummation of the contract has not occurred, and therefore, there is no new contract.
(Employer's Exhibit #1, Pg. 2)

8. No final agreement has been reached by the parties on a collective bargaining agreement as an agreement has not been signed by both parties and an ongoing dispute exists as to the placement of sergeants in the bargaining unit. There being no existing contract barring the Town from filing a petition to amend the bargaining unit by excluding sergeants, the Town's petition in the instant case is timely filed.

9. Outside of the instant dispute concerning whether the sergeants should be included in the unit, all other terms and conditions of employment have been agreed to by the parties through negotiations; and such terms and conditions of employment have been implemented.

10. The present bargaining unit represented by CPOA consists of 14 officers, including three sergeants.

11. Each sergeant is in charge of a division of patrolmen. One is Director of Staff Services, which includes all supportive detective, juvenile, and dispatching functions. The juvenile officer, detective, and dispatcher all report directly to the Director of Staff Services. The other two sergeants are patrol commanders in charge of shifts. All patrolmen report directly to the Patrol Commanders, who assign their work and direct them.

12. The sergeants report directly to the Chief of Police, who reports to the Town Manager and Selectmen.

13. The sergeants conduct performance evaluations of those employees that report directly to them. The Chief has very little input in terms of how a sergeant evaluates an employee. An employee receiving a poor evaluation could be placed on probation, which could subsequently lead to dismissal.

14. The Police Department operates with three shifts: 8:00 a.m. - 4:00 p.m., 4:00 p.m. - Midnight, and Midnight - 8:00 a.m. In the course of a week there are 21 shifts. Twelve of these shifts are headed by a patrol commander, with two to three patrolmen under him. When the Chief is not on duty, the sergeants have total command of the shift. There is

never a patrol commander on the Midnight - 8:00 a.m. shift; that shift is covered by one patrolman. On Saturdays and Sundays, there is no patrol commander on the 8:00 a.m. - 4:00 p.m. shift.

15. If an employee has a grievance, he attempts to resolve it at the first step of the grievance procedure with the sergeants whom they report to. With the exception of disciplinary action taken, sergeants have the authority to adjust employee grievances. If the employee does not agree with the sergeant's decision, he may appeal to the Chief, then to the Town Manager, and finally to the Board of Selectmen.

16. The sergeants are in control of scheduling shifts and vacation times within guidelines set forth in the collective bargaining agreement. Such scheduling is of a routine nature. They also are responsible for training employees subordinate to them.

17. If an incident arises which may require disciplinary action being taken against an employee, a sergeant investigates the incident, and then forwards his findings to the Chief of Police with recommendations on what, if any, disciplinary action should be taken. The Chief then makes a decision as to the disciplinary action to be imposed.

18. If an incident occurs on a shift which is, in the opinion of the sergeant, of such a magnitude that immediate action is necessary, the sergeant may, without consultation with the Chief, immediately relieve the employee from duty for the balance of the shift. The sergeant then prepares a complete report of the incident and gives it to the Chief first thing the next morning. Additional corrective action is at the discretion of the Chief.

19. In the past year, two cases have arisen in which discipline was imposed. In one case, based on an investigation made by a sergeant, the Chief discharged an employee. In that case the sergeant made no recommendation as to the appropriate disciplinary action. In the other case, the sergeant recommended an employee be reprimanded, and the Chief concurred with the recommendation.

OPINION

The issue before us is whether the three sergeants of the Colchester Police Department are supervisors and, thus, ineligible to belong to a bargaining unit pursuant to 21 VSA §1722(12)(B).

Supervisor is defined in 21 VSA §1502(13) as:

An individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

In order to be considered a supervisor, an employee must pass two tests: 1) the possession of any one of the listed powers in the statutory definition; and 2) the exercise of such powers "not of a merely routine or clerical nature but requiring the use of independent judgment".

Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department Town of Brattleboro, 138 Vt. 347 (1980). Theoretical or paper power will not suffice to make an individual a supervisor. The test is whether or not an employee can effectively exercise the authority which may be granted to him on paper. Firefighters of Brattleboro, Local 2628 v. Brattleboro Fire Department, Town of Brattleboro, 1 VLRB 248, at 254 (1978).

We find the three sergeants meet the statutory definition of a supervisory employee as they possess a number of the enumerated powers,

the exercise of which require the use of independent judgment. The sergeants assign subordinates their daily work, and responsibly direct their activities. The exercise of judgment by the Board in this matter relates to the word "responsibly". While it is a close question, we believe the Chief does delegate such authority to the sergeants as they are in total command of the shift in the absence of the Chief. If an incident arises on the shift where employees need guidance on how to proceed, it is the sergeants who direct their activities. Such direction requires the use of independent judgment.

Given such responsible authority to direct, we feel the realities of the chain of command here are such that sergeants exercise supervisory authority over those who report to them. Moreover, sergeants have the effective authority, as the employer's representative at the first step of the grievance procedure, to adjust employee grievances with the exception of disciplinary grievances.

The sergeants do not meet the statutory test with regard to any of the other listed supervisory powers. Clearly, they do not have authority to hire, transfer, layoff, recall, promote, or reward employees or effectively to recommend such action. Also, they do not have the effective authority to discipline employees, or effectively to recommend such action. A sergeant is the agent through which the Chief is apprised of disciplinary problems. He then advises the Chief as to the recommended course of action. However, no disciplinary action is effected on this basis alone. It is the Chief who makes the decision as to the disciplinary action to be imposed. A sergeant may, in event of serious misconduct in

the absence of the Chief, send an employee home for the balance of the shift without consulting with the Chief. However, the sergeant must report the incident to the Chief, and it is the Chief who decides whether to take additional corrective action. The evidence before us indicates the Chief concurred with a sergeant's recommendation in deciding to reprimand an employee. However, one such concurrence does not demonstrate sergeants can effectively recommend disciplinary action; particularly when the evidence is no less clear the Chief is in no way bound to follow a sergeant's recommendation. A sergeant's disciplinary authority is extremely limited, much like the fire lieutenants in Springfield Firefighters Local 2750, International Association of Firefighters, AFL-CIO, CLC and Town of Springfield, 3 VLRB 237 (1980), and the fire captains in Brattleboro, supra. The evidence further indicates sergeants do performance evaluation reports of subordinates, but the preparation of such evaluations does not indicate supervisory authority. While an employee receiving a poor performance evaluation might be placed on probation and subsequently discharged as a result of the evaluation, there is no evidence to show the sergeants have taken or recommended such action, or could do so. Brattleboro, supra (at 255).

Nonetheless, the test for supervisory status requires the possession of any one of the listed powers in the statutory definition, the exercise of which requires the use of independent judgment. Having met that test, we must conclude the sergeants are supervisors pursuant to the act.

ORDER

Now, therefore, based on the foregoing findings of fact and for all the foregoing reasons, it is hereby ORDERED the petition of the Town of Colchester is granted, and the bargaining unit represented by the Colchester Police Officers' Association is amended to exclude sergeants as supervisory employees pursuant to 21 VSA §1722(12)(B).

Dated this 5th day of February, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson